IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.19971 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MADHU INDUSTRIES LTD. & 1 - Petitioner(s)
Versus
UNION OF INDIA THR' SECRETARY & 2 - Respondent(s)

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Appearance :
MR AMAR DAVE with MR PREMAL R JOSHI for Petitioner(s):1-2
MR JITENDRA MALKAN for Respondent(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 10/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This petition primarily challenges order No.91/2005 dated 31st March, 2005 made by the revisional authority in Revision

Application filed by the petitioner-company against Order-in-Appeal dated 30th April, 2004 made by Commissioner of Customs (Appeals) Mumbai.

2. Heard Mr.Amar Dave appearing with Mr.Premal Joshi on behalf of the petitioners and Mr.Malkan on behalf of the respondents. RULE. Mr.Malkan waives service. The petition is taken up for final hearing and disposal today for the reasons that follow hereinafter.

3. The petitioner-company exported 100% cotton dyed and printed fabric and claimed duty drawback in relation to 52 shipping bills. The said claim was denied by respondent No.3. Accordingly, the petitioner challenged the said order by way of an appeal before the Commissioner (Appeals) who confirmed the Order-in-Original without granting any relief to the petitioner. For the present, it is not necessary to refer to earlier round of proceedings which took place between the parties for the simple reason that the said proceedings have been replaced by the present set of proceedings.

4. The petitioner preferred revision application against order of Commissioner (Appeals) and the same came up for hearing on 20th January, 2005 before the revisional authority. The

revisional authority in the impugned order has recorded in Paragraph No.4(v) and 4(ix) as under:

> "(v) That the said authority has totally brushed aside Order No.73/2000 dated 28/02/2000, in the case of one M/s Vigneshwara Exports Ltd., which had attained finality and which squarely covers the case of the appellants also. It is surprising that not a whisper about the said order distinguishing the same, if it was possible, has been made by the said authority while passing the impugned order. Therefore, on this limited ground also, the impugned order is required to be quashed and set aside."
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> (ix) That the issue raised in the Show Cause Notice dated 4/02/2003, stands decided in case of Vigneshwara Exports Ltd., by Order No.73/2000, dated 28/2/2000. The said order dated 28/02/2002 has not been challenged by the Dept., by way of petition or otherwise and therefore, the same has attained finality. The appellant's case is squarely covered by the said order.

5. While passing the impugned order in Paragraph No.6.1 the revisional authority records the appearance on behalf of the petitioners and the facts on the basis of which the dispute has arisen between the parties. Paragraph No.2 of the order records issue that is to be decided and the same is followed

by extract of General Note No.2 of the relevant drawback notification. In Paragraph No.6.3 revisional authority explains as to what the Proviso to the Note lays down and thereafter again reference to the historical fact of the petitioner having manufactured and exported the goods. It is only in Paragraph No.7 that one finds the following observations:

> “7. In view of above facts and circumstances Govt., finds no infirmity in the impugned Order-in-Appeal and accordingly upholds the same. The Revision Application is also devoid of merits and accordingly rejected.”

On behalf of the respondents Mr.Malkan has very fairly accepted that it is not possible to term the aforesaid observations in Paragraph No.7 of the impugned order as being an order made by a quasi-judicial authority considering the nature and the import of the term 'order' in revisional proceedings.

6. This Court has time and again reiterated the legal position laid down by the Apex Court as to the duty of an authority while discharging quasi-judicial powers in exercise of the statutory jurisdiction vested in the authority to hear an

appeal or a revision, statutorily provided. The authority is expected, in the first instance, to set out the facts which give rise to the controversy; thereafter the authority is required to briefly record the respective contentions of the two sides before it; then record the evidence, pro and contra, to the case of the aggrieved party and the other side before it; and lastly, record its finding in relation to each of the issues raised before it. While arriving at the finding the authority is bound, in law, to discuss the merits and de-merits of the contentions raised before it and whether a particular contention is borne out from the facts and evidence on record in the context of the settled position of law as well as the legal propositions canvassed before it. It is necessary for the authority to bear in mind that in discharge of its duty as a quasi-judicial authority called upon to determine a lis between the parties, the authority is required to give reasons in support of its findings and conclusions. Reasons, howsoever brief, constitute the soul and backbone of an order. Any order, in absence of reasons, does not fulfill the requirement of the term 'order' as understood in legal parlance.

7. Testing the impugned order at the touchstone of the aforesaid requirements of law it is apparent that it fails on all

counts. Not only no reasons are assigned for arriving at the conclusion stated in Paragraph No.7 of the impugned order, but the order does not reflect the obligation cast on the authority while deciding a matter before it. As already noticed hereinbefore, without entering into merits of various contentions raised before the authority, suffice it to state that the authority has singularly failed to deal with various contentions raised before it, and by way of illustration, reference made earlier to the proceedings in case of M/s. Vigneshwara Exports Ltd. is sufficient. The petitioner had categorically raised a contention that the facts in case of the said party viz. M/s. Vigneshwara Exports Ltd. and the facts in the case of the petitioner are materially identical and the claim in similar set of circumstances of M/s. Vigneshwara Exports Ltd. for duty draw back having been upheld, the petitioner must be treated on an equal footing. However, the authority has not dealt with the said contention at all, despite reproducing the same; even if one proceeds on the assumption that the said contention is rejected, the rejection is without assigning any reasons.

8. In these circumstances, the impugned order cannot be permitted to operate. The same is hereby quashed and set aside. Revision petition filed by the petitioner is, in the

circumstances, restored to the file of the revisional authority. The revisional authority is directed to grant a proper and reasonable opportunity of hearing to the petitioner and thereafter frame a fresh order in accordance with law.

9. Rule made absolute. The petition stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**